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GOVERNMENT GAZETTE

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SUPPLEMENT

(No. 3)

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Law Department

Notification

The undermentioned rules made by the Court of the Judicial Commissioner, Goa, Daman and Diu, in exercise of its powers under section 20 of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963, are published for general information.

Panjim,
July 22, 1964.

S. BALAKRISHNAN
Law Secretary

In exercise of the powers conferred by section 20 of the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963, the Court of Judicial Commissioner hereby makes the following rules in the matter of —

- I. Presentation of Appeals and Applications
- II. Appeals to Supreme Court
- III. Applications for issue of Writs of Habeas Corpus

I. Presentation of Appeals and Application

1. *Presentation of proceedings.* — All matters which are to be instituted in this Court shall be presented in the Office of the Registrar to such person as the Registrar may by special or general order prescribe.

2. *Presentation of proceedings in person by parties.* — The presentation of any matter or proceeding by any person not represented by an Advocate shall be made by such person personally. If the said person is not known to the Office, he should be identified by some other person who is so known.

3. *Presentation of proceedings by Advocate.* — The presentation of any matters or proceedings on behalf of a party by an Advocate shall be made by such Advocate personally or by his recognized clerks.

4. *Production of vakalatnama by Advocate.* — If an Advocate files an appeal or application, he shall produce either «procuração» or vakalatnama authorising him to do so.

5. *Vakalatnama to bear endorsement of acceptance by Advocate.* — Every vakalatnama specified in rule 4 shall, before it is filed in Court, bear an endorsement of acceptance signed by the Advocate concerned, or by any other Advocate, provided that the former acknowledges and ratifies the acceptance of the vakalatnama within two weeks from the date of its being filed in Court.

6. *Memoranda of proceedings to be in Portuguese or English.* — Memoranda and applications presented by an Advocate shall be in Portuguese, accompanied by a translation or in English language.

7. *Certified copies of proceedings.* — Within two weeks of the deposit of the original of the proceedings, the Advocate shall submit to the Registrar a copy of the proceedings, which shall be included in the index and decrees of the Court, so far as the procedure hereof and proceedings

Every appeal shall be accompanied by a certified copy of the decree or order and judgment under appeal.

8. *Simple copies to accompany appeals.*—When presenting any appeal, an additional typed copy of the memorandum of appeal and of the judgment of the lower Court, pagged in accordance with the certified copy shall be supplied.

9. *Memorandum of appeal to show and explain value of the claim.*—The value of the claim in appeal shall be shown in the memorandum of appeal at the time of the presentation of such memorandum and it shall, where necessary, be stated how the valuation has been arrived at.

10. *Difference in valuation in lower Court and in Judicial Commissioner's Court to be explained.*—When the Court fee paid on, or the valuation stated in, the memorandum of appeal differs from that paid or stated in the lower Court, the difference shall be fully accounted for in a foot-note to the memorandum of appeal at the time of the presentation of such memorandum and the party or the Advocate shall also at the same time furnish all information and material necessary to explain the difference.

11. *Accompaniments to appeals from orders.*—Appeals from any other orders shall in addition to the accompaniments stated above be accompanied by copies of all other relevant documents on which the appellant or applicant wishes to rely, unless such copies or any of them are dispensed with by the Court.

Revision Applications

12. *Accompaniments to revision applications.*—Every application in exercise of the revisional jurisdiction of this Court shall be accompanied by a certified copy of the judgment and decree or order complained of.

13. *Statements of facts in revision applications to be supported by affidavits.*—Every fact stated in any application for the exercise of the revisional jurisdiction not set out in the order or judgment sought to be revised shall be supported by an affidavit.

14. *Period of limitation for revision applications.*—(i) Applications for the exercise of the revisional jurisdiction of this Court shall be presented within 60 days of the date of the decree or order sought to be revised. The time required for obtaining certified copies of the judgment, decree or order sought to be revised shall be excluded when computing the said period of 60 days.

(ii) The Court may for sufficient cause excuse any delay in the presentation of an application referred to in sub-rule (i) above.

15. *Affidavits to be supported by affidavits.*—Every fact stated in any application for the exercise of the revisional jurisdiction not set out in the order or judgment sought to be revised shall be supported by an affidavit.

of applications other than revisional applications shall be supported by affidavits.

or special order cases or par-

ticular classes of cases, except in Special applications under Articles 226 and 227 of the Constitution.

16. *Registrar's power to dispense with submission of certified copies of judgments, orders or decrees.*—The Registrar may dispense with the filing of certified copies of judgments, orders of decrees which are required to be filed under these rules when such copies or the originals thereof are already on the record of this Court.

17. *Documents or copies produced or supplied by Advocates or parties be neatly typed and clearly legible.*—All memorandum of appeals, applications, affidavits, and copies supplied by the Advocates or parties, shall be neatly typed on thick, durable 25 lines paper leaving a margin of 2 inches. The copies supplied for the use of the Court and for service on the opposite parties shall accord with the original and shall be clearly legible.

18. *Office may refuse illegible or badly typed copies and documents.*—The Office may refuse to accept any such papers which are not typed as prescribed or which do not conform to the requirements of rule 17 above.

19. *Party in person to supply memo of address.*—At the time of presentation, the party in person shall supply a memorandum of his address to which communications regarding the matter presented by him should be addressed by the Office and sufficient postal stamps for the postage and registration charges.

20. *Advocates not ordinarily practising in this Court to supply their addresses.*—Advocates who do not ordinarily practice in this Court, may, at the time of the presentation of any proceeding, supply their addresses to which communications from the Office regarding the date of hearing, etc., and other particulars where their presence would be necessary, may be sent.

21. *«Advocate» includes Attorney-at-law.*—In these Rules, the expression «Advocate» shall include an Attorney authorised to appear in Court, unless the context otherwise requires.

II. Appeals to the Supreme Court

1. *Form of Petition for a certificate for leave to appeal and accompaniments to the petition.*—(i) Petitions for the issue of a certificate for appeal to the Supreme Court shall be presented in form No. 1 in Schedule A appended to these rules and shall specify in the heading the names of the actual parties to the appeal at the time of the presentation of the petition tracing their relation to the original parties where they have been placed on the record as representatives in interest.

(ii) Full particulars of addresses of the parties shall be furnished within seven days of the filing of the petition.

(iii) Every petition shall be accompanied by two spare typed copies of the petition, and of the judgment, where the judgment has been pronounced by this Court, for the use of the Court.

2. *Notice of rule and its service on other side.* — If the Court grants a rule upon the petition, the Registrar shall issue notice in form No. 2 in Schedule A annexed to these rules, on payment of the prescribed process fee, calling upon the opposite party to show cause within a period of time, after the service of notice, to be prescribed by the Registrar, why a certificate as under the Code of Civil Procedure, O.XLV, r. 3 should not be granted.

3. *Registrar to investigate cause of delay if parties not served within 4 months.* — If the parties concerned are not served within four months from the date on which the rule is granted, the Registrar shall personally investigate the causes of delay and take all possible steps to expedite the service, and, if necessary, he shall submit the case to the Court for direction.

4. *Certificate of fitness.* — Upon the Court making the rule absolute, the Office shall issue a certificate in form No. 3 of Schedule A.

5. *Security for payment of costs to be furnished.* — (i) Within the period prescribed by law, the appellant shall, unless otherwise directed by the Court, give security for payment of the costs in the sum of Rs. 2,500 and shall deposit either cash or Government securities to that amount provided, however, the Court at the time of granting the certificate may direct that some other form of security be furnished. The Court may, in appropriate cases, enhance the amount of security to be deposited up to a maximum of Rs. 5,000. (SCR. O.XII, r. 1A).

(ii) The form of security bond to be taken from an appellant to the Supreme Court as under O. XLV, r. 7, of the Code of Civil Procedure, in cases in which the Court has directed that security may be taken, shall be in the form given in Schedule B.

6. *Deposit of expenses for preparation of transcript record.* — The Appellant shall, within six weeks from the granting of the certificate for appeal to the Supreme Court by this Court, or when special leave has been granted by the Supreme Court, within six weeks from the date of the receipt of the order of the Supreme Court, deposit in the treasury along with the necessary authority from the Registrar, in the first instance, Rs. 200 towards the fees and expenses of preparing the transcript record. The Office shall, thereupon, call for the record and proceedings, if they are not already in this Court, and, within a week from the receipt of the record or from the date of the deposit of Rs. 200 if the record is already in the Judicial Commissioner's Court, estimate the charges for the preparation of the transcript record. Immediately after the charges have been estimated, the Office shall issue a notice to the appellant, who shall deposit the estimated charges within three weeks from the date of the receipt of the notice.

7. *Consolidation of appeals.* — Where there are two or more appeals arising out of the same matter, and the Judicial Commissioner's Court is of the opinion that it would be for the convenience of the Supreme Court and all parties concerned that the appeals should be consolidated, the Judicial Commissioner's Court may direct the appeals to be consolidated and make such order for security of costs as the justice of the case requires. (SCR. O.XII, r. 6).

8. *Service of notice in certain cases upon Advocates is sufficient service.* — Where a party has been represented at the hearing of the appeal by an Advocate, service of notice in the following cases on the Advocate shall be deemed sufficient notice; and, unless his vakalatnama has been cancelled with the sanction of the Court, such Advocate shall accept service of the notice: —

(a) Notice of rule issued on a petition presented under rule 1 of these rules;

(b) Notice of admission of appeal;

(c) Notice for settling Index under rule 11;

(d) Notice of the transmission of the transcript record to the Supreme Court:

Provided that where the notice can be served on an Advocate under the above provisions, the applicant's Advocate shall, in addition to the bhatta to be paid under the rules, deposit with the treasury within four days an amount calculated at Rs. 4 per each opponent who can be so served to meet the cost of the Advocate concerned for communicating the notice to his client. The Registrar may order the costs reasonably incurred by the Advocate to be paid out of such deposits:

Provided also that, if the Advocate served with the notice is unable to communicate it to the party concerned, he shall inform the Registrar, who may thereupon either order the notice to be served by registered post or through a Court or if necessary obtain the directions of the Court.

9. *On admission of appeal appellant to take necessary steps for transmission of transcript record.* — As soon as the appeal has been admitted whether by an order of the High Court or by an order of the Supreme Court granting special leave to appeal, the appellant shall without delay, take all necessary steps to have the printed record transmitted to the Registrar of the Supreme Court, and the Registrar of the Judicial Commissioner's Court, shall, with all convenient speed, certify to the Registrar of the Supreme Court that the respondent has received notice, or is otherwise aware, of the order of the Judicial Commissioner's Court admitting the appeal, or of the order of the Supreme Court giving the appellant special leave to appeal. (SCR. O. XV, rule 1).

10. *Powers of the Court on failure of appellant to furnish security or deposit.* — Where an appellant, having obtained a certificate from the Judicial Commissioner's Court, fails to furnish the security or make the deposit required, the Judicial Commissioner's Court may, on its own motion or on application in that behalf made by the respondent, cancel the certificate and may give such directions as to the costs of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires. (SCR. O. XII, r. 3).

11. *Index of transcript record, and procedure for its settling.* — (i) Within two weeks of the deposit of the costs for the preparation of the transcript, an index of all the documents to be included and of a list of documents excluded from, the Indian Limitation Act, shall be prepared. As soon as the index shall, so far as concordance with the procedure heretofore and proceedings

shall be annexed to the record in the following form: —

Number on record	Mark (if any) in the Court below	Description and date of paper	Whether the whole portion, and (in case of a portion) what portion to be inserted in the transcript	Page of transcript to be filled in later
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The list of all other papers, documents and exhibits in the case not included in the transcript shall be kept ready for being despatched with the transcript record to the Supreme Court under rule 27 below.

(ii) As soon as the lists are prepared as prescribed in sub-rule (i), a notice in the form given in Schedule C of these rules shall be issued by the Registrar requiring the Advocates or parties on both sides to attend the Registrar's Office for the purpose of settling the index within the time specified in the notice.

(iii) It shall be in the discretion of the Registrar to omit from the transcript any documents which have not, within the time specified, been expressly asked for by the parties.

(iv) If the Advocate fails to attend or to settle the index within the time specified, the Registrar shall place the matter before the Court without further delay. Any costs incurred on such account shall be borne in such manner as the Court may direct.

(v) If the parties are agreed as to the documents to be omitted, such documents shall not be translated or transcribed.

(vi) In the case of the parties differing as to any document and the Registrar being of opinion that it should not be translated and transcribed, the matter shall be placed before the Court for determination.

(vii) Any of the parties may apply to the Court within two weeks from the date of the Registrar's order directing any document to be included in or excluded from the transcript record.

(viii) If either party expressly asks for translation or inclusion of any document, and the application is granted, the circumstances shall be noted in the transcript.

12. *Transcript record in cases where decision is likely to turn exclusively on question of law.*—

Wherever the decision of the appeal is likely to turn exclusively on a question of law, the appellant may, with the sanction of the Court, print such parts only of the record as may be necessary for the discussion of the same (SCR. O. XV, rule 3A).

13. *Exclusion of unnecessary or formal documents.*—The Registrar, as well as the parties and their agents shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other matters. Parts of documents; but the documents printed shall be enumerated in a type-set transmitted with the record. (SCR.

14. *Objection to inclusion of documents to be noted in index paper.*—Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to. (SCR. O. XV, r.4).

Translations

15. *Translation for transcript record.*—The translations required for the transcript record shall be made by the Office of the Chief Translator, or by such other persons as the Judicial Commissioner may from time to time appoint in that behalf.

16. *Estimate of translation charges.*—(i) A fee of Rs. 16 shall be charged for estimating the translation charges.

(ii) If, after having due regard to the amount of deposit made under rule 6 and the number of documents to be translated for the purpose of inclusion in the transcript record, the Office of the Registrar deems it necessary to obtain an estimate of the translation charges prior to the actual entrusting of the work of translation, the Chief Translator shall certify the necessary estimate within two weeks after the documents to be translated are determined and specified.

17. *No translation again of documents already translated for hearing of matter in Judicial Commissioner's Court.*—Any part of the record which may have been officially translated for the purposes of the hearing in the Judicial Commissioner's Court shall not be translated over again, unless the Court specially orders.

18. *When depositions need not be translated.*—The depositions of witnesses in the regional language shall not be translated in cases in which the notes of the substance of the depositions are taken in English by the lower Court, unless either one or both the parties desire and show sufficient cause to the Registrar that particular deposition or depositions should be translated.

19. *Procedure for translation.*—The parties on each side shall be invited from time to time to inspect such translations, and in cases of disagreement, the points in dispute, which must be stated in writing, shall be submitted within two weeks to the Chief Translator for his decision. The translations in dispute shall be examined and authenticated by the Chief Translator or such other person as the Judicial Commissioner may from time to time appoint in that behalf, and shall be filed with the record of the case.

20. *Fee for translations.*—(i) A fee of Re. 1 for translation and an additional fee of 65 Paisas for examination and authentication per folio of 100 words shall be levied.

(ii) The fees for translation, except when the translation is done by the Court Translators out of office hours or by other persons with the permission of the Judicial Commissioner, and the fees for examination and authentication shall be credited to Government.

Preparation of the Transcript Record

21. *Preparation and printing of record.* — The record shall be prepared and printed under the supervision of this Court in accordance with the rules of the Supreme Court as set out in Schedule D below and the parties may submit any disputed question arising in connection therewith to the decision of this Court, and it shall give such directions thereon as the justice of the case may require.

22. *Practice as to translations & papers-books.* — Save as herein provided, the practice as to translations and paper books shall be regulated by such Office rules as the Judicial Commissioner and the Additional Judicial Commissioner may from time to time make.

23. *Fees for preparing transcript record.* — For preparing the record, fees shall be charged at the following rates: —

- (1) Preparation of Index. — 10 Paisas per page.
- (2) Copying and comparing of documents for the preparation of the Press copy — 25 Paisas per folio of 100 words.
- (3) Head Notes to documents in the Transcript Record — 10 Paisas each.
- (4) Examination of proofs — 25 Paisas for every printed page.
- (5) Certifying a copy of the record by the Registrar. — Re. 1 for every 10 pages or a fraction thereof.

The fees mentioned above shall be credited to Government.

24. *Scrutiny by Office of expenditure in preparation of transcript record.* — In the course of the preparation of the transcript record, the Office shall, from time to time, make close scrutiny of the expenditure incurred in that behalf. If at any stage, the Office deems it necessary to call for an additional deposit, the same shall be notified to the appellant, who shall be required to deposit it within one month of the service of notice upon him, failing which the matter shall be placed before the Court for orders.

25. *Failure to show diligence in taking steps in preparation of record.* — Where an appellant whose appeal has been admitted fails to show due diligence in taking all necessary steps in connection with the preparation of the record, the Registrar shall call upon the appellant to explain his default and if no explanation is offered or if the explanation offered is unsatisfactory, the Registrar shall call upon the appellant to show cause before the Judicial Commissioner's Court why a certificate should not be issued that the appeal has not been effectually prosecuted by the appellant. Where the Court issues such a certificate, the appeal shall be deemed as from the date of such certificate, to stand dismissed for non-prosecution without an express order of the Supreme Court, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court shall think fit to direct. (SCR. O. XII, rule 5).

26. *Names to be set out in full in petition certificate and order admitting appeal.* — The names of all the parties shall be set out in full in the petition for leave

to appeal to the Supreme Court, on the certificate granting leave, on the order admitting the appeal, and on the inside title page of the printed book.

Despatch of Transcript Record

27. *Despatch of record to Supreme Court.* — (i) At the expense of the appellant transmit to the Registrar of the Supreme Court such number of copies as the Supreme Court may direct or, in the absence of any special direction in this behalf, 20 copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the Seal of this Court;

(ii) give notice of the despatch of the record to the parties; and

(iii) send to the Registrar of the Supreme Court a certificate as to the date or dates on which the notice under the preceding clause (ii) has been served. (SCR. O. XV, r. 6).

Amendment of the Record

28. *Where record becomes defective by death or change of status of party before despatch of record.* — Where at any time between the admission of an appeal and the despatch of the record to the Supreme Court, the record becomes defective by reason of death, or change of status, of a party to the appeal or for any other reason, this Judicial Commissioner's Court may, notwithstanding the admission of the appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of Judicial Commissioner's Court is the proper person to be substituted or entered on the record in place of, or in addition to, the party on record; and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express order of the Supreme Court [SCR. O. XVI, rule 12(a)].

29. *Limitation for application to bring heirs on record.* — An application under rule 28 above for a certificate to bring on record the legal representative of a deceased appellant or respondent shall, subject to the provisions of sections 4 and 5 of the Indian Limitation Act, 1963 (XXXVI of 1963), be made within 90 days from the date of the death of the said appellant or respondent. [SCR. O. XVI, r.12(b)].

30. *Where record becomes defective by death or change of status of party subsequent to despatch of record.* — Where the record subsequent to its despatch to the Supreme Court, becomes defective by reason of the death, or change of status, of a party to the appeal, or for any other reason, this Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Supreme Court showing who, in the opinion of Judicial Commissioner's Court is the proper person to be substituted or entered on the record, in place of, or in addition to, the party on record. (SCR. O. XVI, r.13).

31. *Provisions of C. P. C. relating to Abatement and Limitation to apply to proceedings under Rules 28-30.* — The provisions of Order XXII of the Civil Procedure Code relating to abatement and of Article 131 in the First Schedule to the Indian Limitation Act, 1963 (XXXVI of 1963) shall, so far as may be applicable, apply to applications and proceedings

under rules 28, 29, 30 in this Court and in the Supreme Court (SCR. O. XVI, r.14A).

Withdrawal and Compromise of the Appeals

32. *Withdrawal of appeal prior to making order admitting appeal.* — An appellant who has obtained a certificate from this Court may, at any time prior to the making of an order admitting the appeal withdraw the appeal on such terms as to costs and otherwise as the Court may direct, (SCR. O. XII, rule 2).

33. *Withdrawal of appeal prior to despatch of record.* — Where an appellant whose appeal has been admitted or who has obtained special leave desires, prior to the despatch of the record to the Supreme Court, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without an express order of the Supreme Court, and the deposit of the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the High Court may think fit to direct. A copy of such certificate shall be forwarded to the Registrar of the Supreme Court in respect of appeals on special leave from the Supreme Court. (SCR. O. XII, rule 4 and O. XIII, rule 10).

34. *Compromise before despatch of record to Supreme Court.* — Where after the admission of an appeal but prior to the despatch of the record to the Supreme Court, the parties enter into a compromise of the matters in dispute in appeal and desire to obtain a decree or order in terms thereof, the appellant shall file the deed of compromise in this Court and apply to it for an order to dispense with the printing of the record and to transmit to the Supreme Court such part of the record as may be necessary. On the order being made, the Registrar shall transmit to the Supreme Court such part of the record as may be necessary. On the order being made, the Registrar shall transmit to the Supreme Court at the expenses of the appellant 10 copies of the record consisting of the judgment of the Judicial Commissioner's Court, the decree or order made thereon, the certificate of the Judicial Commissioner's Court and the order admitting the appeal, the deed of compromise, the petition to transmit the record and the order made thereon, and such other part of record as the parties may consider necessary. (SCR. O. XII, rule 4A).

35. *Appeal to stand dismissed from date of intimation of withdrawal of appeal by Supreme Court.* — On receipt of an intimation from the Registrar of the Supreme Court under O. XVI, rule 6 of the Supreme Court Rules, 1950, that an appeal has been withdrawn, the said appeal shall stand dismissed from the date of the said intimation without further order, and the deposit for the costs of the appeal, and the security entered into by the appellant shall be dealt with in such manner as the Judicial Commissioner's Court may think fit to direct. (SCR. O. XVI, rule 6).

Appeals by Special leave and under Article 135 of the Constitution

36. *Deposit of security for costs on special leave by Supreme Court.* — (i) On receipt of an order

from the Registrar of the Supreme Court granting special leave to appeal under Order XIII, rule 7 of the Supreme Court Rules, 1950, unless the Supreme Court specially directs otherwise, any security for costs to be furnished by the appellant shall be in the sum of Rs. 2,500 in cash or in Government securities within six weeks of the date of the order granting special leave. The Judicial Commissioner's Court shall deal with such security in accordance with the directions contained in the order of the Supreme Court when determining the appeal.

(ii) Where security is to be deposited in the Judicial Commissioner's Court, the Registrar shall, as soon as a deposit is made, intimate the fact and the date of such deposit to the Registrar of the Supreme Court; where the deposit is not made within the time fixed, or within such further time as may be granted by the Supreme Court, the Registrar shall forthwith report the default to the Registrar of the Supreme Court. (SCR. O. XIII, rule 11).

37. *Provisions of O. XLV C. P. C. to apply to matters by Special leave.* — On receipt from the Registrar of the Supreme Court of the certified copy of an order granting special leave to appeal under O. XIII, rule 7, of the Supreme Court Rules, 1950 the Judicial Commissioner's Court shall, in the absence of any special directions in the order, act in accordance with the provisions contained in O. XLV of the Code of Civil Procedure, V of 1908, so far as applicable.

38. *Rules of other chapters apply mutatis mutandis to appeals by Special Leave and under Art. 135 of Constitution.* — Save as provided in rules 36 and 37, the other rules of these Rules shall apply mutatis mutandis to appeals by special leave of the Supreme Court and under Article 135 of the Constitution.

Criminal Appeals

39. *Application for certificate in criminal proceeding.* — An application for a certificate required in respect of a criminal proceeding under Art. 132 (1) or for a certificate under article 134 (1) (c) of the Constitution shall be filed, subject to the provisions of Sections 4, 5, and 12 of the Indian Limitation Act, XXXVI of 1963, within 60 days from the date of judgment or order of the Judicial Commissioner's Court:

Provided that in a criminal proceeding involving a sentence of death an application for such a certificate shall be filed, subject to the provisions of Sections 4, 5 and 12 of the Indian Limitation Act, XXXVI of 1963, within 30 days from the date of judgment or order of the Judicial Commissioner's Court.

40. *Application for certificate in proceedings involving sentence of death.* — Notwithstanding anything in any other rule in those Rules, in a criminal proceeding involving a sentence of death, an application for a certificate under article 132 (1) or 134 (1) (c) of the Constitution may be made orally to the Court at the time the judgment is delivered, and the Court shall thereupon record an order granting or refusing to grant the certificate.

Special Leave by the Supreme Court

41. *Intending applicant for special leave to be furnished with copy of judgment or order.* — On an

application by a petitioner intending to apply for special leave to the Supreme Court in criminal proceedings and appeals, a certified copy of the judgment or order sought to be appealed from shall be supplied to him free of cost. [SCR. O. XXI, rule 4(3)].

42. *Printing and transmission of record.*—On receipt from the Supreme Court of the order granting special leave to appeal or of the copy of the petition of appeal, as the case may be, the Registrar shall arrange, subject to the directions of the Supreme Court, if any, for the printing of the record in the case and for the transmission of the printed record to the Supreme Court with all convenient speed. In the preparation of the printed record, the printed paper-book, if any, prepared for the use of the Judicial Commissioner's Court in the proceeding before it, from which the appeal to the Supreme Court arises, may be included. The record shall be printed at the expense of the appellant, unless otherwise ordered by the Supreme Court; but in appeals involving sentence of death, the record shall be printed at the expense of the State. (SCR. O. XXI, r.16).

43. *Service of notice of Supreme Court on respondent.*—On receipt of a certified copy of the order together with a certified copy of the petition for special leave, and the affidavit, if any, filed in support thereof from the Supreme Court, subject to any special direction in the order, a notice of the order shall be given to the respondent, and the parties shall be called upon to take all necessary steps to have the printed record transmitted to the Supreme Court as speedily as possible, and the Registrar shall certify to the Supreme Court that the respondent has received notice of the order of the Supreme Court granting special leave to appeal. (SCR. O. XXI, rules 10 and 11).

44. *Deposit for preparation of transcript record.*—The appellant shall, except in appeals involving sentence of death, within four weeks from the date of receipt of the copy of the petition of appeal in the Judicial Commissioner's Court from the Registrar of the Supreme Court, or within such further time as the Court may grant, deposit with the treasury, in the first instance, Rs. 200 towards the fees and expenses for preparing the transcript record. The Office shall, thereupon, call for the record and proceedings, if they are not already in the Judicial Commissioner's Court, and, within a week from the receipt of the record or from the date of deposit of Rs. 200 if the record is already in the Judicial Commissioner's Court, estimate the charges for the preparation of the transcript record. Immediately after the charges have been estimated the Office shall issue a notice to the appellant, who shall deposit the estimated charges within three weeks from the date of the receipt of the notice.

In the case of appeals arising out of Special leave, unless the Supreme Court directs otherwise the period of four weeks or such further time as the Court may grant, shall be computed from the date of the receipt of the certified copy of the order in the Judicial Commissioner's Court from the Registrar of the Supreme Court.

45. *Failure of appellant to act diligently to be reported to Supreme Court.*—Where the appellant fails to take the necessary steps to have the printed record prepared and transmitted to the Supreme

Court with due diligence, the Registrar shall report the default to the Supreme Court after obtaining the necessary orders from the Court. (SCR. O. XX, r.18).

46. *Despatch of record to the Supreme Court.*—As soon as the record has been got ready, the Registrar shall despatch to the Registrar of the Supreme Court not less than 15 copies where the appeal raises a question as to the interpretation of the Constitution, and not less than 10 copies in other cases. In all cases involving a sentence of death when sufficient number of copies of the Judicial Commissioner's Court printed record are available, they shall be despatched to the Supreme Court along with such additional records as may be necessary, as soon as these are printed; and where the record is to be printed a fresh for the Supreme Court appeal, the printed record shall be made ready and despatched to the Supreme Court within a period of 60 days after the receipt of the intimation from the Registrar of the Supreme Court of the filing of the petition of appeal or of the order granting special leave to appeal. (SCR. O. XXI, r. 20).

47. *Application of rules to criminal proceedings.*—So far as may be, the rules in this Chapter shall, with the necessary modifications and adaptations, apply to Criminal appeals:

Provided that in Criminal proceedings no security for costs shall be required to be deposited.

48. *Progress of appeals under preparation.*—A list shall be maintained showing the numbers and dates of all pending Supreme Court appeals in various stages of preparation, and the Registrar shall examine every quarter all such appeals in arrears, and call on the appellant who may be responsible for the delay to show cause before the Court why the appeal should not be dismissed for want of prosecution.

SCHEDULE A

Form no. 1

(Rule 1)

Petition for a certificate for leave to appeal to the Supreme Court.

In the Court of the Judicial Commissioner and Additional Judicial Commissioner, Goa, Daman and Diu

Appeal No. of 19
Suit No. of 19

versus Appellant;
Respondent.

To

The Honourable the Judicial Commissioner and the Additional Judicial Commissioner of this Honourable Court;

The petition of
Sheweth—

1. That this suit was filed by the plaintiff in the Court of the Judge, and prayed (here set out a concise statement of the plaint in suit and give amount or value of the subject-matter).

2. That the said suit came on for hearing before the Judge of on the day of and the said Judge on the day of passed the decree (or order).

3. That (here insert name of appellant) feeling himself aggrieved by the said decree (or order) filed a memorandum of appeal against the same on the day of

4. That the said appeal came on for argument before the Court of Appeal consisting of the Honourable and the Honourable on the day of passed the decree (or order).

CIVIL APPLICATION No. _____ of 19 _____, for leave to
appeal to the Supreme Court of India, at New Delhi, against
the JUDGMENT and DECREE dated the _____ of this
Judicial Commissioner's Court (_____)
in Appeal No. _____ of 19 _____ from ORIGINAL/APPEL-
LATE Decree, preferred against the Judgment and Decree
dated the _____ in _____ No. _____
of _____ on the file of the _____

To

Whereas permission to prefer an Appeal to the Supreme Court at New Delhi against the Judgment and Decree of the Court in the said Appeal No. of 19 from ORIGINAL/APPELLATE Decree was asked for by the Appellants abovenamed, AND WHEREAS the security for the costs of the Respondents abovenamed and the deposit for the costs of the preparation of the printed Transcript Record as required by Order XLV, rule 7, Code of Civil Procedure, 1908, and the rules of this Judicial Commissioner's Court in that behalf have been respectively completed and made in this Court, THIS COURT DOth DECLARE that the appeal in this matter to the Supreme Court has been admitted on the date the day of 19 ..

THEREFORE TAKE NOTICE that the correct copies of the record of the Case so far as is material to the questions in dispute in the said Appeal to the Supreme Court shall be transmitted with all convenient despatch to the Supreme Court.

WITNESS Esquire,
Judicial Commissioner/Additional Judicial Commissioner at Panjim aforesaid, this day of
One thousand Nine hundred and

By the Court,

Seal.

Deputy Registrar & Sealer

This day of 19

Received the above notice of Admission of appeal on behalf of the Respondents.

Advocates for the Respondents

SCHEDULE B

(Rule 5)

Form of security bond for respondent's costs in an appeal to the Supreme Court (under Order XLV, Rule 7, of the Civil Procedure Code).

In the Court of the Judicial Commissioner and Additional Judicial Commissioner, Goa, Daman and Diu

Appeal to the Supreme Court.

A. B.

... Appellant;

C. D.

... Respondent.

Appeal No. of the year on the file of the Hon'ble Judicial Commissioner's/Additional Judicial Commissioner's Court at Panjim.

Whereas permission has been granted under Order XLV, Rule 3, of the Civil Procedure Code to the above named Appellant in the appeal abovementioned, to prefer an appeal to the Supreme Court against the decree of the Hon'ble the Judicial Commissioner/Additional Judicial Commissioner's Court at Panjim.

I, , residing in stand Surety of my free will for the abovenamed Appellant and hereby enter into an agreement with the Registrar of the said Judicial Commissioner's Court in its appellate jurisdiction, his executors, administrators and assigns, in my own behalf and in behalf of my heirs, executors, administrators and assigns that the abovenamed Appellant residing at and his heirs, executors, administrators and assigns shall pay all the costs that may be incurred by the said Respondent in the said Supreme Court whenever the said Court may order the abovenamed Appellant or his heirs, executors, administrators or assigns to do so; or in the event of the said appeal being dismissed for want of prosecution under Order XII, Rules 4 and 5, and Order XVI, Rule 6 of the Supreme Court Rules, 1950, or otherwise, he or they shall, on proof if required, pay all the costs which the aforesaid Respondent may have incurred whether in the Supreme Court or in the Judicial Commissioner's Court in connection with the said Appeal or in connection with any application made in the matter of the said Appeal and in case he or they fail to pay whatever may be due as aforesaid, I personally and my heirs, executors, administrators and assigns shall pay into the Judicial Commissioner's Court at Panjim such costs to the extent of Rupees in the manner and at the time that may be ordered by the Court.

Attestation.

1.
2.

As witness hereof I put my signature this day of the month of in the Christian year before (Some Government Officer whose designation should be stated)

Signature.

The abovenamed surety having signed the above surety bond in my presence, the same is completed this day in my presence.

The date as aforesaid.

(Signature of Government Officer)

SCHEDULE C

(Rule 11)

Notice to the Advocate to settle the index in the paper book of the Supreme Court Appeal.

Appeal No. of 19

Appellant before the Supreme Court;

versus

Respondent before the Supreme Court.

To

Esquire

Advocate for

Take notice that (1) an Index of all documents included in the transcript record of the above Supreme Court Appeal, and (2) a list of all other papers, etc., not so included have been prepared. You are requested to attend the Registrar's Office for the purpose of settling the Index within one week from the date hereof, and in case you are not agreed as to the documents to be included in or omitted from the transcript record, you should within two weeks from the date hereof, submit to the Registrar a list in the form given in rule 11(1) of the Rules regarding appeals to Supreme Court, together with a brief statement of the grounds on which you require the said documents on any specific portion thereof to be included or excluded from the transcript.

This day of 19 Registrar

SCHEDULE D

(Rule 21)

Rules as to Printing of records

(First Schedule of the Supreme Court Rules, 1950)

1. The Record in appeals to the Supreme Court shall be printed in the form known as Demy Quarto on both sides of the paper with single spacing.

2. The size of the paper used shall be such that the sheet, when folded and trimmed, will be about 11 inches in height and 8 and half inches in width.

3. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter and notes. Every tenth line shall be numbered in the margin.

4. Record shall be arranged in two parts in the same volume, where practicable, viz, —

Part I — The pleadings and proceedings, the transcript of the evidence of the witnesses, the Judgment, Decrees, etc., of the Courts below, down to the Order admitting the Appeal.

Part II — The exhibits and documents.

5. The Index to Part I shall be in chronological order, and shall be placed at the beginning of the volume.

The Index to Part II shall follow the order of the exhibit mark, and shall be placed immediately after the Index to Part I.

6. Part I shall be arranged strictly in chronological order i.e. in the same order as the Index.

Part II shall be arranged in the most convenient way for the use of the Supreme Court as the circumstances of the

case require. The documents shall be printed as far as suitable in chronological order, mixing Plaintiff's and defendant's documents together when necessary. Each document shall show its exhibit mark, and whether it is a Plaintiff's or Defendant's document (unless this is clear from the exhibit mark) and in all cases documents relating to the same matter, such as:—

- (a) a series of correspondence, or
- (b) proceedings in a suit other than the one under appeal; shall be kept together. The order in the Record of the documents in Part II will probably be different from the order of the Index, and the proper page number of each document shall be inserted in the printed Index.

The parties shall be responsible for arranging the Record in proper order for the Supreme Court, and in difficult cases counsel may be asked to settle it.

7. The documents in Part I shall be numbered consecutively.

The documents in Part II shall not be numbered apart from the exhibit mark.

8. Each document shall have a heading which shall consist of the number of exhibit mark and the description of the document in the Index, without the date.

9. Each document shall have a heading which shall be repeated at the top of each page over which the document extends, viz. —

Part I

(a) Where the case has been before more than one Court, the short name of the Court shall first appear. Where the case has been before only one Court, the name of the Court need not appear.

(b) The heading of the document shall then appear consisting of the number and the description of the documents in the Index, with the date, except in the case of oral evidence.

(c) In the case of the oral evidence «Plaintiff's evidence» or «Defendant's evidence» shall appear next to the name of the Court and then the number in the Index and the witness's name, with «Examination», «Cross-examination» or «Re-examination», as the case may be.

Part II

The word «Exhibit» shall first appear and next to it the Exhibit mark and the description of the document in the index with the date.

Sufficient space shall be left after the heading to distinguish it from the rest of the matter printed on the page.

10. The parties shall agree to the omission of formal and irrelevant documents, but the description of the document may appear (both in the Index and in the Record), if desired, with the word «not printed» against it.

A long series of documents, such as, accounts, rent-rolls, inventories, etc., shall not be printed in full, unless counsel so advises, but the parties shall agree to short extracts being printed as specimens.

11. In cases where maps are of an inconvenient size or unsuitable in character, the Appellant shall, in agreement with the Respondent, prepare maps drawn properly to scale and of reasonable size, showing, as far as possible, the claims of the respective parties, in different colours.

SCHEDULE E

Civil Procedure Code

Order XXII

Death, Marriage and Insolvency of Parties.

1. No abatement by party's death, if right to sue survives. — The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives. — Where one or more plaintiffs or defendants die, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff — (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs, the suit shall abate.

plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant. — (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Determination of question as to legal representative. — Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

6. No abatement by reason of death after hearing. — Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgement may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

7. Suit not abated by marriage of female party. — (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgement, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable, for the debt of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

8. When plaintiff's insolvency bars suit. — (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit or give security. — (2) Where the assignee or receiver refuses to continue the suit and to give such security as the Court may order, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency. The Court may make an order dismissing the suit awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the estate.

9. Effect of abatement or dismissal. — (1) Where a suit is abated or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1908 (XXXVI of 1908) shall apply to application under sub-rule (2).

10. Procedure in case of assignment before final order in suit. — (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the

suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be in interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. Application of Order to appeals. In the application of this Order to appeals, so far as may be, the word «plaintiff» shall be held to include an appellant, the word «defendant» a respondent, and the word «suit» an appeal.

12. Application of Order to proceedings. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

Order XLV.

Appeals to the Supreme Court.

1. «Decree» defined. In this Order, unless there is something repugnant in the subject or context, the expression «decree» shall include a final order.

2. Application to Court whose decree complained of. — Whoever desires to appeal to the Supreme Court shall apply by petition to the Court whose decree is complained of.

3. Certificate as to value or fitness. — (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to the Supreme Court.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. Consolidation of suits. — For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

5. Remission of dispute to Court of first instance. — In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to the Supreme Court, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance which last-mentioned Court shall proceed to determine such amount or value and shall return report together with the evidence to the Court by which reference was made.

Effect of refusal of certificate. — Where such certificate is refused, the petition shall be dismissed.

The security and deposit required on grant of certificate. — Where the certificate is granted, the applicant shall, within sixty days, as the Court may upon cause shown allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the earlier date, —

(a) furnish security in cash or in Government securities for the amount of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the Supreme Court a copy of the whole record of the suit, except —

(1) formal documents directed to be excluded by any Rule of the Supreme Court in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included; and

(4) such other documents as the High Court may direct to be excluded;

Provided that the Court at the time of granting the certificate may after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished:

Provided further, that no adjournment shall be granted to an opposite party to contest the nature of such security.

8. Admission of appeal and procedure thereon. — Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall —

(a) declare the appeal admitted,

(b) give notice thereof to the respondent,

(c) transmit to the Supreme Court under the seal of the Court of any of the papers in the suit on his applying therefor and Court a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies paying the reasonable expenses incurred in preparing them.

9. Revocation of acceptance of security. — At any time before the admission of the appeal the Court may upon cause shown, revoke the acceptance of any such security, and make further direction thereon.

9 A. Power to dispense with notices in cases of deceased parties. — Nothing in these rules requiring any notice to be served on or given to any opposite party or respondent shall be deemed to require any notice to be served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree is complained of or at any proceedings subsequent to the decree of that Court.

Provided that notices under sub-rule (2) of rule 3 and under rule 8 shall be given by affixing the same in some conspicuous place in the Court house of the Judge of the District in which the suit was originally brought, and by publication in such newspapers as the Court may direct.

10. Power to order further security or payment. — Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to the Supreme Court such security appears inadequate, or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

11. Effect of failure to comply with order. — Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of the Supreme Court,

and in the meantime execution of the decree appealed from shall not be stayed.

12. Refund of balance deposit. — When the copy of the record, except as aforesaid, has been transmitted to the Supreme Court, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. Powers of Court pending appeal. — (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by and party interested in the suit, or otherwise appearing to the Court, —

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. Increase of security found inadequate. — (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the court may, on the application of the other party, require further security,

(2) In default of such further security being furnished as required by the Court, —

(a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security;

(b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. Procedure to enforce orders of the Supreme Court. — (1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court was preferred.

(2) Such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from, or to such other Court as the Supreme Court by such decree or order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said decree or order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3)

(4) Unless the Supreme Court otherwise directs, no decree or order of that Court shall be inoperative on the ground that no notice has been served on or given to the legal representative of any deceased opposite party or deceased respondent in a case, where such opposite party or respondent did not appear either at the hearing in the Court whose decree was complained of or at any proceedings subsequent to the decree of that Court, but such order shall have the same force and effect as if it had been made before the death took place.

16. Appeal from order relating to execution. — The orders made by the Court which executes the decree or order of the Supreme Court, relating to such execution shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

17. Appeals to Federal Court. — Rule 17 omitted by s. 2 of the Federal Courts Act, 2 of 1941.

Applications under Articles 226 and 227 of the Constitution, and Rules for the issue of Writs and Orders under the said Articles

1. *Applications for issue of writs of mandamus, prohibition, quo warrant and writ or certiorari.* — Every application for the issue of a direction, order or writ under article 226 of the Constitution shall set out therein the relief sought and the grounds on which it is sought. It shall be solemnly affirmed or supported by an affidavit. In every such application, the applicant shall state whether he has made any other application to the Supreme Court or Court in respect of the same matter and how that application has been disposed of.

If the applicant makes an application to the Supreme Court in respect of the same matter during the pendency of the application in the Court, he shall forthwith bring this fact to the notice of the Court by filing an affidavit in the case and shall furnish a copy of such affidavit to the other side.

The Court may adjourn the hearing of the application made to it pending the decision of the Supreme Court in the matter.

2. *Accompaniments to writ application.* — (i) The applicant shall annex to his application typed copies of judgments and/or orders of the lower Courts or Tribunals and of affidavits and other relevant documents which are in English or, where any of such documents are not in English, typed copies of translations in English of such documents. He shall file along with the application a duplicate copy of the application with the said annexures for the use of the Court. Both the original and the duplicate copy with the prescribed annexures shall be duly pagged and indexed.

(ii) Any translations, other than official translations, annexed to the application shall be either certified to be true by the Advocate for the applicant or supported by an affidavit of the applicant affirming that the translations are true.

(iii) In applications against the orders of the Revenue Tribunal, the applicant shall, in addition, file a true copy each of the judgment and/or order of the Revenue Tribunal and certified copies of the judgments and/or orders of the Officer concerned in the proceedings.

(iv) In an application against the order of Election Tribunal, the applicant shall, in addition to the annexures and accompaniments specified above, supply a typed copy of the memorandum of the application.

3. *Examination of writ applications.* — (i) The Office shall examine the applications as expeditiously as possible and in any case complete the examination within six days from the date of filing.

(ii) Notwithstanding anything contained in any other rules, when the Office finds that any application filed under this Chapter is incomplete, or that there are other objections, the Office shall, as soon as the examination is completed, affix on a Special Notice Board a notice specifying the office objections.

(iii) An entry of the date of notification as above shall be made on the presentation form of the application. The Advocate for the applicant or the applicant, as the case may be, shall remove all office objections within three weeks from the date on which the office objections are notified as above, failing which the matter shall, without delay, be placed before the Court for orders.

4. *Disposed of applications by the Court, rule nisi may be granted by the Judge.* — Applications under rule 1 shall be heard and disposed of by the Court, but a Judge may grant a rule nisi, provided he shall not pass any final order on that application.

5. *Summary dismissal or rule nisi.* — The Court may either summarily dismiss the application, or order a rule nisi to be issued against the opponent against whom it is sought, as it thinks fit. Any rule so granted shall be made returnable on such day as the Court may direct, but it shall not be made returnable within less than 14 days after service thereof on the opponent.

6. *Interim or interlocutory order.* — If the Court grants rule, it may make such interim or interlocutory order in the case, either unconditionally or upon such terms and conditions as the Court thinks just, as the nature and circumstances of the case may require.

7. *Process fee and copies of application for service on party respondents.* — (i) The applicant or his Advocate or Attorney, as the case may be, shall pay the process fees and supply, unless otherwise directed by the Court, as many typed copies of the application with annexures as prescribed in rule 2 as there are respondents within 14 days from the date of the order directing the issue of rule in the application:

Provided that, where the members of any Tribunal against whose decision or order the application is made, are made party respondents to the application as such, only one typed copy of the application with the prescribed annexures may be supplied for service on the said members of the Tribunal collectively, and service of a copy on any one of them shall be deemed to be service on all.

(ii) When the process fees are not paid and/or requisite number of copies of the application are not supplied within the time prescribed above, the application shall be placed, without delay, before the Court for orders.

8. *Service of rule nisi.* — The rule nisi granted as above shall, along with a copy of the order, if any, made under the last preceding rule, be served on the opponent in the manner prescribed for the service of summons upon a defendant in a suit.

9. *Answer to rule nisi.* — An answer to the rule nisi showing cause against such application shall be made by filing an affidavit in the Office of the Registrar and by serving a copy thereof upon the applicant or his Advocate or Attorney, as the case may be, at least two days before the returnable date of the rule.

10. *Service of rule nisi on other parties.* — The Court may, in its discretion, at any time before a final order is made on the application, order the rule nisi to be served on any party to be affected by any order which the Court may make in the matter. The provisions contained in the last two preceding rules relating to service of the rule and filing of an affidavit in reply shall apply to such a case.

11. *No further affidavits allowed.* — No further affidavit or affidavits shall be filed by any party except with the leave of the Court.

12. *Adjournments for examination of witnesses.* — If cause be shown or answer made upon affidavit putting in issue any material question of fact, the Court may allow oral testimony of witnesses to be taken and for that purpose may adjourn the hearing of the rule to some other date. In such case either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in a suit.

13. *Costs.* — The costs of all applications and orders made under this Chapter shall be in the discretion of the Court.

The Supreme Court has been directed by the Damal f. 1— Applications under article 227 of the Constitution shall be heard and disposed of by the Court. By such application the applicant shall state Panjim, he has made any other application to the July 22nd respect of the same matter and how it has disposed of.

Execution of order

In execution of the Government of Goa (Drawing up or order including cost. — Every Court) Passed on civil applications under article 226 of the Constitution including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree.

16. *Applications to be supported by affidavits.* — (i) Applications for making a report of non-satisfaction to the Government of any order or decree passed in any civil application under art. 226 of the Constitution shall be supported by an affidavit of the applicant, and shall be accompanied by a certified copy of the decree or order.

(ii) Applications under the above sub-rule shall be heard and disposed of by the Registrar.

(iii) If the Registrar is satisfied (1) that the order or decree is not satisfied within the time specified therein or (2) that the execution of the order is not barred by any provision of Law, he may make a report of non-satisfaction to the Government.

17. *Execution of orders under art. 227.* — An order made by the Court under article 227 of the Constitution shall be executable in the same manner in which the order made by the Court or Tribunal, against which the application under article 227 has been made, could have been executed under the law.

III. Applications for issue of Writs of Habeas Corpus

1. *Application under S. 491 Cr. P. C.* — All applications by or on behalf of persons for orders under section 491 of the Code of Criminal Procedure shall be made to the Court taking the criminal business of the Court, duly verified by oath or affidavit, setting forth the circumstances under which the order is sought.

2. *Rule nisi on prima facie case.* — If such Court is of opinion that a prima facie case for granting the application is made out, a rule nisi shall be issued calling upon the person or persons against whom the order is sought to appear on a day to be named therein to show cause why such order should not be made and at the same time, if the Court so directs, to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

Provided that a Judge may grant a rule nisi if the conditions specified above are fulfilled, but he shall not pass any final order on the application.

3. *Order on hearing of rule.* — On the return day of such rule or on any day to which the hearing thereof may be adjourned, if no cause is shown, or if cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty or delivered to the person entitled to their custody. If cause is allowed, the rule shall be discharged.

4. *Service of writs.* — Where the place of detention is known, the High Court Writ shall be served upon the jailor with a copy to the detaining authority. Where the place of detention is not known, the writ should be served upon the detaining authority. But an attempt should be made by the Office to find out where the place of detention is; and if the place is ascertained, then a copy of the writ shall be served upon the jailor.

5. *Costs of rule in discretion of Court.* — In disposing of any such rule, the Court may, in its discretion, make an order for the payment by one side or the other of the costs of the rule.

6. *Procedure as to evidence to be recorded.* — The Court may, if necessary, direct a Court of Session or a Magistrate to take evidence as provided in section 428 of the Criminal Procedure Code.

Alvaro Jose Maria da Silva Dias
Judicial Commissioner